

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

B&B DEPARTMENT STORES SOUTH,
LLC,
PLAINTIFF

Vs.

CIVIL NO.
21-19306 (GC)

ND RETAIL, et al,
DEFENDANTS

JANUARY 12, 2023
CLARKSON S. FISHER COURTHOUSE
402 EAST STATE STREET
TRENTON, NEW JERSEY 08608

B E F O R E: THE HONORABLE GEORGETTE CASTNER
U.S. DISTRICT COURT JUDGE
DISTRICT OF NEW JERSEY

**COURT'S OPINION ON DEFENDANTS QUIET STORM'S & WILLIAM
DREIBELBIS' MOTION TO DISMISS FOR LACK OF PERSONAL
JURISDICTION/IMPROPER VENUE/DOCTRINE OF FORUM NON CONVENIENS**

FRANCIS J. GABLE, C.C.R., C.R.R.
OFFICIAL U.S. REPORTER
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1 THE COURT: We are on the record in the matter of
2 B&B Department Stores South, LLC v. ND Retail, et al, Docket
3 Number 21-19306. This matter comes before the Court upon
4 Defendants Quiet Storm's and William Dreibelbis' Motion to
5 Dismiss for lack of personal jurisdiction, improper venue and
6 the doctrine of forum non conveniens. Plaintiff opposed the
7 motion. I have carefully considered the parties' submissions
8 and set forth my ruling on the Motion on the record today
9 without oral argument, pursuant to Local Rule 78.1. For the
10 reasons set forth on the record today, and for good cause,
11 Defendants' Motion to Dismiss is denied.

12 This is an action for the misappropriation of trade
13 secrets under both Federal and New Jersey state law, breach of
14 contract, breach of the covenant of good faith and fair
15 dealing, unfair competition, unjust enrichment and tortious
16 interference with a contract. (Compl. ¶ 1.) According to the
17 Complaint, Plaintiff B&B Department Stores South, LLC ("B&B")
18 is a New Jersey limited liability company, having its
19 principal place of business located in Brick, New Jersey.
20 Plaintiff's company is managed by Helen Bertole of Interlaken,
21 New Jersey. (Compl. ¶ 1.) Defendant ND Retail, LLC, doing
22 business as Quiet Storm Surf & Turf ("Quiet Storm"), is a
23 Maryland business entity having its principal place of
24 business located in Ocean City, Maryland. (Compl. ¶ 2.)
25 Defendant, William Dreibelbis ("Dreibelbis"), is an individual

1 whose domicile, upon information and belief, is the State of
2 Maryland, although he claims to reside in Florida. (See Def.
3 Mot. to Dismiss at 3.) Quiet Storm is owned and managed by
4 Dreibelbis. (Compl. ¶ 3.)

10:03 5 Pursuant to the Complaint, Plaintiff is highly
6 successful and profitable retail department store chain
7 founded in the 1970s, and is located in the central and
8 southern parts of the Jersey Shore. (Compl. ¶ 10.) Plaintiff
9 sells beach and surf wear as well as beach accessories, home
10:03 10 wares and novelty and souvenir items. (Compl. ¶ 11.)

11 Plaintiff has four New Jersey retail locations located in
12 Ocean City, Beach Haven, Ship Bottom and Sea Girt. (Compl. ¶
13 12.) Plaintiff leases their Ocean City and Beach Haven
14 locations from DABA Company, LLC, which is the landlord.

10:03 15 (Compl. ¶ 16.) Plaintiff leases their Ship Bottom and Sea
16 Girt locations from other distinct entities. (Compl. ¶ 17.)
17 Plaintiff's headquarters, distribution and processing facility
18 is located in Brick, New Jersey, and is owned by Philip
19 Bertole, LLC. (Compl. ¶ 18.)

10:04 20 Plaintiff alleges that one of their key advantages
21 is that they have substantial and long-standing relationships
22 with suppliers and customers (Compl. ¶ 19), and they have
23 devoted a large amount of time, money and resources into the
24 marketing strategy, growing their assets to expand their
10:04 25 market, and training their sale and management workforce.

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1 (Compl. ¶ 20.) One of these members of the workforce is
2 co-defendant Zawrotniak, who had served as the B&B senior
3 buyer for over 10 years. (Compl. ¶ 20.) Zawrotniak had
4 worked for Bertole for nearly 15 years prior to her time with
5 B&B. (Compl. ¶ 25.) In early 2020 Plaintiff engaged Peapack
6 Gladstone Bank ("PGB") to serve as B&B's financial advisor in
7 their attempted sale of their retail stores and distribution
8 facility (hereinafter, the "Business"). (Compl. ¶ 39.) PGB
9 found that defendant, Quiet Storm, through Dreibelbis was
10 interested in purchasing B&B. As a result, PGB mandated that
11 Quiet Storm and Dreibelbis execute a Confidentiality
12 Agreement. (Compl. ¶ 48.) The Agreement noted that Quiet
13 Storm would have access to Plaintiff's confidential
14 information, but it barred them from doing impermissible
15 things with the confidential information, such as disclosing
16 the information, using it for anything other than evaluating
17 the potential transaction, and soliciting Plaintiff's
18 employees. (Compl. ¶ ¶ 51-59.)

19 After Quiet Storm executed the Confidentiality
20 Agreement, PGB provided them a Confidential Information
21 Memorandum which identified and disclosed B&B's name and
22 confidential information, such as the particulars about B&B's
23 operations, sales and marketing, competition, facilities,
24 management and staff, as well as B&B's financial overview.
25 (Compl. ¶ ¶ 60-61.) Plaintiff alleges that after entering

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1 into the Confidentiality Agreement and receiving the
2 Confidential Information Memorandum, Quiet Storm and
3 Dreibelbis proceeded to wrongfully use B&B's confidential
4 information and trade secrets for their own financial
5 advantage and strategic gain. Specifically, Plaintiffs allege
6 that Quiet Storm and Dreibelbis unlawfully solicited and
7 unsuccessfully poached B&B's employee, Zawrotniak from
8 Plaintiff (Compl. ¶ 66), which allegedly caused Plaintiff
9 serious economic damages. Dreibelbis then, without their
10 consent, went around PGB and attempted to negotiation directly
11 with Bertole in violation of the Confidentiality Agreement.
12 (Compl. ¶ 86.) Dreibelbis, also without the consent of
13 Plaintiff or PGB, contacted Plaintiff's landlord to
14 renegotiate two of Plaintiff's leases.

15 To meet their burden of proof for the Court to
16 exercise personal jurisdiction, the Plaintiff must establish
17 sufficient contacts between the Defendant and the forum state
18 with reasonable particularity. Once the Plaintiff presents a
19 prima facie case, "the burden of proof shifts to the
20 defendant, which must present a compelling case that the
21 presence of some other considerations would render
22 jurisdiction unreasonable." *Telebrands Corp. v. Mopnado*, No.
23 CV21407969JLLJAD, 2016 WL 368166, at *3 (D.N.J. Jan. 12,
24 2016), report and recommendation adopted, No. CV147969JLLJAD,
25 2016 WL 355072 (D.N.J. Jan. 28, 2016) (citing *Breckenridge*

1 *Pharm., Inc. v. Metabolite Labs, Inc.*, 444 F.3d 1356, 1362
2 (Fed.Cir. 2006)).

3 A district court sitting in New Jersey may exercise
4 personal jurisdiction over a non-resident defendant to the
5 extent permitted by the New Jersey Long Arm Statute. The New
6 Jersey Long Arm Statute permits the same protections afforded
7 by the Due Process Clause under the Fourteenth Amendment.

8 Therefore, the Court may exercise personal jurisdiction so
9 long as "certain minimum contacts with [New Jersey] such that
10 the maintenance of the suit does not offend traditional
11 notions of fair play and substantial justice." *Henry Heide,*
12 *Inc. v. WRH Prods. Co., Inc.*, 766 F.2d 105 (3d Cir.

13 1985) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310,
14 316(1945)). "Minimum contacts can be analyzed in the context
15 of general jurisdictional or specific jurisdictional."

16 General jurisdiction results from, among other things,
17 "systemic and continuous" contact between a nonresident
18 defendant and the forum state. "Specific jurisdiction over a
19 defendant exists when the defendant has 'purposefully directed
20 his activities at residents of the forum, and the litigation
21 results from alleged injuries that arise out of or relate to
22 those activities.'"

23 Here, based on my review of the Complaint and the
24 motion papers, there does not appear to be general
25 jurisdiction over Defendants Quiet Storm and William

1 Dreibelbis.

2 With respect to specific jurisdiction, the Third
3 Circuit has established a three-part test for determining when
4 a court can assert specific jurisdiction over a defendant. See
5 *O'Connor v. Sandy Lane Hotel, Co.*, 496 F.3d 312 (3d Cir.
6 2007). First, the Defendant must purposefully direct his
7 activities at the forum. A defendant need not physically
8 enter a state to purposefully direct their actions at a state.
9 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985).

10 Electronic communications directed at a party in the forum
11 state can satisfy this prong. *Grant Ent. Grp., Ltd. v. Star*
12 *Media Sales, Inc.*, 988 F.2d 476, 482 (3d Cir. 1993).
13 E-mails, calls and letters are forms of communication that can
14 show whether a party purposefully availed themselves in a
15 specific forum. *Remick v. Manfredy*, 238 F.3d 248, 256 (3d
16 Cir. 2001).

17 Here, I find that Defendants Quiet Storm and William
18 Dreibelbis purposefully directed its activities at New Jersey.

19 First, Defendants entered into a Confidentiality
20 Agreement in hopes of buying B&B, a New Jersey based business.
21 This deal was brokered by PGB, B&B's financial advisor, who
22 was also located in New Jersey. Paragraph 11 of the
23 Confidentiality Agreement made B&B a third-party beneficiary
24 to the Agreement by and between Defendants and PGB, and that
25 any dispute under the Agreement would be subject to New Jersey

1 law. Defendants also entered into a Letter of Intent to buy
2 B&B with B&B's counsel. B&B's counsel is located in New
3 Jersey. Additionally, B&B's physical business is also located
4 in New Jersey. Defendants made many e-mails, telephone calls
5 and other forms of communication directed at New Jersey in
6 hopes of acquiring a New Jersey business footprint.

7 Defendants also personally reached out directly to
8 Bertole. Both the Letter of Intent and the Confidentiality
9 Agreement spelled out each party's contact person, and
10 Defendants allegedly ignored this by contacting Bertole, a New
11 Jersey resident, directly. Defendants further purposefully
12 directed their activities at New Jersey when they allegedly
13 unlawfully solicited and poached Zawrotniak from B&B. The
14 alleged unlawful action directly impacted a New Jersey

15 business, B&B. Most notable, Defendants contacted B&B's
16 landlord and told the landlord that B&B intended to sell their
17 business. Defendants asked the landlord to extend the leases
18 on B&B's Ocean City and Beach Haven locations by five years
19 and offered to pay double the current rent. Not only did
20 these communications violate the Confidentiality Agreement as
21 alleged in the Complaint, but this is also strong evidence
22 that Defendants directed their activities at New Jersey.

23 The Court finds Defendants' argument that there is
24 no jurisdiction over Defendant ND Retail, LLC, because it was
25 not a party to the Confidentiality Agreement, unavailing.

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1 First, Defendants admit they operate retail stores under the
2 name Quiet Storm in Ocean City, Maryland, and that ND Retail
3 operates under the trade name, Quiet Storm. And that's set
4 forth in Defendant's Motion to Dismiss papers. Also based on
5 the parties' submissions and the public business records,
6 Quiet Storm is solely a trade name of ND Retail, and ND Retail
7 has an address of 1 North Division Street in Ocean City,
8 Maryland, the same address Mr. Dreibelbis used when signing
9 the Confidentiality Agreement on behalf of Quiet Storm as its
10 managing partner. Moreover, the Agreement applies to Quiet
11 Storm, as well as the affiliates and subsidiaries. It appears
12 that Mr. Dreibelbis used the Quiet Storm name in furtherance
13 and on behalf of ND Retail's business. As a result, the Court
14 finds that Defendants, both Quiet Storm and Dreibelbis,
15 purposefully directed their activities at the forum state.

16 Second, the case must arise out of or relate to at
17 least one of the activities mentioned under the first factor.
18 Here, it is clear that this case arises out of Defendants'
19 activities in New Jersey. Dreibelbis made many phone calls to
20 New Jersey whether to speak with PGB, or when circumnavigating
21 PGB by calling Bertole directly or Bertole's landlord.
22 Dreibelbis, on behalf of Quiet Storm, entered into a
23 Confidentiality Agreement in an attempt to acquire a New
24 Jersey based business that was governed by New Jersey law.
25 Additionally, Dreibelbis allegedly and unlawfully solicited

1 and poached Zawrotniak from Plaintiff. All the alleged
2 unlawful conduct was directed at Plaintiff who is located in
3 New Jersey. Therefore, the case arises out of Defendants'
4 alleged unlawful conduct in New Jersey.

5 The third and final factor for determining specific
6 jurisdiction is evaluating whether the exercise of
7 jurisdiction falls in line with fair play and substantial
8 justice. "The Supreme Court has indicated that lower courts
9 addressing the fairness question may consider 'the burden on
10 the defendant, the forum state's interest in adjudicating the
11 dispute, the plaintiff's interest in obtaining the most
12 efficient resolution of controversies, and the shared interest
13 of the several states in furthering fundamental substantive
14 social policies.'" See *Miller Yacht Sales, Inc. v. Smith*, 384
15 F.3d 93, 97 (3d Cir. 2004).

16 The Court finds that exercising jurisdiction falls
17 in line with fair play and substantial justice. Litigating
18 this case in New Jersey would not serve as a great burden on
19 Defendants. It appears that Defendants are located on the
20 East Coast, not far from New Jersey. Also, the increased use
21 of electronic communications in the litigation process eases
22 the burden of traveling for depositions. To add, New Jersey
23 has a large interest in hearing this case because a New Jersey
24 based business was allegedly harmed by Defendants' conduct.
25 Finally, hearing the case would also be the most efficient for

1 Plaintiff in obtaining the most efficient resolution of this
2 controversy here in New Jersey. The Court finds that all
3 three factors are satisfied for this Court to exercise
4 specific personal jurisdiction over Defendants Quiet Storm and
5 Dreibelbis.

6 With respect to venue, 28 U.S.C. 1391(b)(3) provides
7 that venue is proper in "any *jurisdictional district in which
8 any defendant is subject to the Court's personal jurisdiction
9 with respect to such action." Since the Court finds that it
10 has personal jurisdiction over Quiet Storm and Dreibelbis,
11 venue is proper under Title 28 U.S.C. 1391(b)(3).

12 The Court also rejects Defendants' *Forum Non*
13 *Conveniens* argument. A federal court has discretion to
14 dismiss a case on the ground of forum non conveniens "when an
15 alternative forum has jurisdiction to hear the case, and...
16 trial in the chosen forum would establish...oppressiveness and
17 vexation to a defendant...out of all proportion to plaintiff's
18 convenience, or...the chosen forum [is] inappropriate because
19 of considerations affecting the court's own administrative and
20 legal problems." *Sinochem Int'l Co. v. Malaysia Int'l*
21 *Shipping Corp.*, 549 U.S. 422, 429 (2007). The Supreme Court
22 refers to Forum Non Conveniens as "a supervening venue
23 provision, permitting displacement of the ordinary rules of
24 venue when, in light of certain conditions, the trial court
25 thinks that jurisdiction ought to be declined. That's

1 *American Dredging Co. v. Miller*, 510 U.S. 443, 449 (1994).

2 Here, Defendants do not put forward any compelling conditions
3 or circumstances in this case as to why jurisdiction should be
4 denied in New Jersey or why venue in New Jersey would be
5 oppressive. As a result, the Court will not dismiss this case
6 under the doctrine of *Forum Non Conveniens*.

7 With respect to transferring this case to an
8 alternative court, 28 U.S.C. 1404(a) permits a case to be
9 transferred "[f]or the convenience of parties and witnesses in
10 an interest of justice, a district court may transfer any
11 civil action to any other district or division where it might
12 have been brought." Here, Defendants have not provided any
13 compelling reasons why the case should be transferred.

14 Although Dreibelbis alleges he is a resident of Florida, it
15 appears he is the only one who would be inconvenienced by a
16 New Jersey based venue. Inconvenience alone is not enough for
17 this Court to transfer the case. B&B, PGB and their witnesses
18 are all located in New Jersey; so too are their books and
19 records. Additionally, in the interest of justice, the Court
20 has an interest in hearing the case that involves alleged harm
21 suffered by a citizen of this State.

22 For the reasons stated above, it is ordered that
23 Defendants Dreibelbis' and Quiet Storm's Motion to Dismiss for
24 lack of personal jurisdictional is denied. An appropriate
25 order will be entered on the docket.

1 This matter is adjourned.

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4 "I certify that the foregoing is a correct transcript from the
5 record of proceedings in the above-entitled matter."

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7 /S/ Francis J. Gable, C.C.R., C.R.R. January 17, 2022

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Signature of Court Reporter

Date

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